

STANDARD TERMS OF SUPPLY OF SERVICES



1. AGREEMENT TO SUPPLY SERVICES

1.1. **LAND SERVICES SA OPERATING PTY LTD (ACN 618 229 815) as trustee for the LAND SERVICES SA OPERATING TRUST (LSSA)** has agreed to provide, and the Client agrees to purchase, certain lands titling and division consultancy services more particularly described in the "Premium Managed Service Product Guide" (current at the date of this agreement) (**Services**) on these standard terms of supply of services.

1.2. The Client acknowledges that the Services do not include the Exclusions.

2. GENERAL OBLIGATIONS OF THE PARTIES

2.1. The parties will, at all times:

- (a) act reasonably in performing their obligations and exercising their rights under this Agreement;
- (b) diligently perform their respective obligations under this Agreement; and
- (c) work together in a collaborative manner.

3. STANDARD OF SERVICES

3.1. The Supplier represents and warrants to the Client that, in performing the Services, it will:

- (a) use reasonable skill, care and diligence expected of a professional service provider in the relevant field of expertise in which the Supplier has been engaged;
- (b) use reasonable endeavours at all times to faithfully and honestly discharge its duties in the course of providing the Services to the Client; and
- (c) comply with all Laws.

4. CLIENT'S OBLIGATIONS

4.1. The Client must ensure it provides all data, information and access as is reasonably requested by the Supplier to perform the Services.

4.2. The Client acknowledges and agrees that:

- (a) the Supplier is entitled to and will rely on information and instructions provided by the Client or its Personnel and any instructions and approvals given by the Client (and that the Supplier is relieved of liability to the extent of any inaccuracy, inconsistency or omission in that information or instructions); and
- (b) the Services may include advice, but:
 - (i) all decisions in connection with the implementation of that advice will be the sole responsibility of the Client (including ensuring it acts on any advice on its own judgement and knowledge of its circumstances and any relevant requirements such as the Plan Information Material);
 - (ii) the Client is solely responsible for ensuring the applicable Plan is compliant with the Approved Plan Format, the Plan Information Material and all Laws; and
- (c) the intention of the Services is to facilitate expedited Plan lodgement but in no way guarantees the Plan will be approved for data or accepted as a filed plan;
- (d) the Services do not in any way fetter, limit or restrict the Supplier's obligations to the Government and otherwise under Law to ensure that, in examining a Plan, it will ensure any decision is Properly Made and that the Plan complies with all legal requirements; and
- (e) any timeframes set out in the description of the Services are guidance only and the Client acknowledges that, while the Supplier will use reasonable endeavours to meet those

timeframes, certain matters may delay lodgement or approval of a Plan.

5. INSURANCE

5.1. The Supplier must obtain and maintain such insurance against such risks, and on such terms, as a prudent supplier of the Services would undertake (in each case with solvent and reputable insurers).

6. FEES AND INVOICING

6.1. In consideration of being supplied the Services, the Client must pay the Fees.

6.2. If all or any portion of the Fees are calculated on a time and materials basis, those Fees shall be calculated on the basis of the particulars of the time and materials spent in performing the Services as reasonably demonstrated to the Client by the Supplier.

6.3. The Supplier will invoice the Client for the Fees on the earlier of:

- (a) monthly in arrears; or
- (b) on completion of the Services,

(unless agreed otherwise) and the Client must pay any invoice in full without set-off or counterclaim, and without any deduction or withholding for any tax or any other reason (unless required by Law), within 30 days of receipt.

6.4. The Supplier must ensure that any invoice sets out reasonable particulars of the Fees including having regard to the Services actually performed by the Supplier during the relevant period.

6.5. If the Client, in good faith, disputes any amount contained in any invoice or claimed as payable by the Supplier, it shall pay the undisputed portion of the amount shown in the relevant invoice by the applicable due date and provide notice to the Supplier setting out:

- (a) the date and invoice number of the relevant invoice;
- (b) the amount of the invoice in dispute;
- (c) the grounds for such dispute; and

any other allegation, matter or detail it considers relevant in relation to the disputed invoice.

6.6. Any disputed or amended amounts must be paid by the Client to the Supplier within 14 days of the issue being resolved determining that the Supplier is entitled to such disputed or amended amount.

6.7. Any amount not paid by the Client by the applicable due date will incur interest at a rate of 2% above the Reserve Bank of Australia Cash Rate calculated and compounded daily.

6.8. Without limiting any other rights the Supplier may have under this Agreement or at Law, the Supplier may suspend or terminate the Services, in whole or in part, or withhold any Services not yet performed if any amount due under this Agreement remains overdue.

7. TERMINATION

7.1. Termination for cause

The Supplier may terminate this Agreement by giving the Client written notice to that effect if:

- (a) the Client is in breach of any term of this Agreement and such breach is not remedied within 30 days of written notification by the Supplier of the breach;
- (b) the Client becomes the subject of insolvency proceedings;
- (c) the Client has breached the same provision of this Agreement on 3 or more occasions, irrespective of whether or not the Client has remedied the breaches;
- (d) control of the Client (whether by a change in majority shareholding or otherwise) changes whereby control is determined by the capacity to determine the outcome of

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decisions of the Client's financial and operating policies and for the purpose of this clause another entity may control the Client even if it does so as trustee; or

- (e) any director, secretary or officer of the Client is convicted of a criminal offence and the Client fails to remove such person from his or her office immediately after a conviction is made, delivered or recorded.

7.2. Rights and obligations on Termination

Termination pursuant to this clause does not prejudice any other rights accruing to the Supplier prior to the date of termination, including the right to pursue all remedies available at law or in equity.

8. CONSEQUENTIAL LOSS

- 8.1. The extent permitted by Law, under no circumstances will the Supplier be liable to the Client for any loss of profit, loss of revenue, loss of anticipated savings, loss of contract, loss of business opportunity, loss of reputation or goodwill, loss of data or any special, exemplary, indirect or consequential loss arising in connection with this Agreement.

9. FORCE MAJEURE

- 9.1. Neither party is liable for any delay in performing, or failure to perform, its obligations pursuant to this Agreement (other than an obligation to pay money) if the delay or failure is due to Force Majeure.
- 9.2. If a party is delayed in performing, or fails to perform, its obligations (other than an obligation to pay money) due to Force Majeure, the performance of that party's obligations will be suspended.
- 9.3. If a delay or failure by a party to perform its obligations due to Force Majeure exceeds 60 days, either party may immediately terminate the Agreement on providing notice in writing to the other party.

10. CONFIDENTIALITY

10.1. Disclosure generally

- (a) Neither party may, without the prior written approval of the other party, disclose the other party's Confidential Information.
- (b) A party does not breach clause 10.1(a) where it is legally compelled to disclose the other party's Confidential Information.

10.2. Disclosure by Supplier

The Supplier does not breach clause 10.1(a) by making a disclosure for the purpose of:

- (a) a disclosure directed by the Government to enable it to disclose to Parliament, the Governor, Cabinet, any Minister of the Crown or Parliamentary or cabinet committee or sub-committee; or
- (b) disclosures which must be made by the Supplier to Government as a consequence of the Supplier's contractual obligations to the Government; or
- (c) prosecuting or defending any legal proceedings.

10.3. Use by Supplier

The Supplier must not use any Confidential Information of the Client for any purpose other than performing its obligations under this Agreement.

10.4. Disclosure to or by employees, agents and subcontractors

- (a) Each party must take all reasonable steps to ensure that its Personnel do not make public or disclose the other party's Confidential Information.
- (b) The Supplier may at any time require the Client to arrange for its Personnel to execute a suitable confidentiality deed. The

Client must arrange for all such deeds to be executed within the timeframe reasonably proposed by the Supplier.

10.5. Return of documents

The Client must on demand return to the Supplier any documents supplied by the Supplier to the Client in connection with this Agreement.

10.6. Survival

This clause 10 will survive the expiry or termination of this Agreement.

11. PRIVACY

- 11.1. To the extent a party, or any of its Personnel, collects, holds, uses, discloses, stores or processes Personal Information relating to this Agreement, the party must comply with, and ensure that its Personnel comply with the Privacy Laws to the extent that they apply to the Client or those Personnel and otherwise as if the Privacy Law regulated all Personal Information.

12. LIABILITY, RELEASE AND INDEMNITY

12.1. Cap on Liability

The Supplier's total liability under and in connection with the Agreement) is limited to an amount equal to the Fees paid by the Client for Services under this Agreement.

12.2. Release

The Client releases the Supplier and its Personnel in respect of all liability for Loss which may be suffered by the Client in relying on any advice provided by the Supplier in performing the Services.

13. GST

13.1. Preliminary

Words or expressions used in this clause that are defined in the GST Act have the same meaning given to them in the GST Act.

13.2. Consideration does not include GST

Unless otherwise stated, any consideration specified in this Agreement does not include any amount for GST.

13.3. Recovery of GST

If a supply under this Agreement is subject to GST, the recipient of the supply must pay to the supplier an additional amount equal to the amount of consideration multiplied by the applicable GST rate.

13.4. Time of payment

The additional amount is payable at the same time as the consideration for the supply is payable or is to be provided. However, the additional amount need not be paid until the supplier gives the recipient a Tax Invoice.

13.5. Adjustment of additional amount

If the additional amount differs from the amount of GST payable by the supplier, the parties must adjust the additional amount accordingly.

13.6. Reimbursement

If a party is entitled to be reimbursed or indemnified under this Agreement, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an Input Tax Credit.

14. IMPLIED TERMS

- 14.1. Subject to clause 14.2, any condition or warranty which would otherwise be implied in this Agreement is excluded.
- 14.2. Where a Law implies in this Agreement any condition or warranty, and that Law avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such

condition or warranty, the condition or warranty is deemed to be included in this Agreement.

14.3. However, if permitted by the relevant Law, the liability of the Supplier for any breach of such condition or warranty is limited, at the option of the Supplier, to one or more of the following:

- (a) if the breach relates to goods:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired; and
- (b) if the breach relates to services:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

15. NOTICES AND OTHER COMMUNICATIONS

15.1. Form - all communications

Unless expressly stated otherwise in this Agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with this agreement must be:

- (a) in writing;
- (b) in English or accompanied by a certified translation into English;
- (c) signed by the sender (if an individual) or an authorised officer of the sender; and
- (d) marked for the attention of the person identified in the Details or, if the recipient has notified otherwise, then marked for attention in the way last notified.

15.2. Delivery

Communications must be:

- (a) left at the address set out or referred to in the Details; or
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Details; or
- (c) given in any other way permitted by Law.

However, if the intended recipient has notified a changed address in writing then communications must be to that address.

15.3. When effective

Communications take effect from the time they are received or taken to be received under clause 15.4 (whichever happens first) unless a later time is specified.

15.4. When taken to be received

Communications are taken to be received, if sent by post, three days after posting (or seven days after posting if sent from one country to another).

15.5. Receipt outside business hours

Despite clauses 15.3 and 15.4, if communications are received or taken to be received under clause 15.4 after 5.00pm in the place of receipt or on a non-Business Day, they are taken to be received at

9.00am on the next Business Day and take effect from that time unless a later time is specified.

16. TRUSTEE CAPACITY

16.1. Trustee Capacity

Subject to clause 16.3:

- (a) the Supplier enters into this Agreement in its capacity as trustee of the Trust and in no other capacity;
- (b) the Client will not be entitled to:
 - (i) claim from or commence proceedings against the Supplier in respect of any Loss, liability, cost or expense under or in connection with this Agreement in any capacity other than as the trustee of the Trust;
 - (ii) seek to appoint a receiver, liquidator, administrator (or person performing a similar function) or prove in any liquidation, administration or arrangement of or affecting the Supplier; or
 - (iii) enforce or seek to enforce any judgment in respect of a Loss under or in connection with this Agreement against the Supplier in any capacity other than as trustee of the Trust; and

the Supplier's liability (despite any other clause to the contrary) under or in connection with this Agreement is limited to the extent to which the Supplier is entitled to be indemnified for that liability out of assets of the Trust.

16.2. Supplier Acknowledgement

The Supplier acknowledges and agrees that it will exercise its rights of indemnification in order to satisfy its obligations under this Agreement.

16.3. Limitation of liability exclusion for Supplier

The provisions of clause 16.1 do not apply to any obligation or liability of the Supplier to the extent that it is not satisfied because there is (under the Trust Deed or by operation of law) a reduction in the extent, or an extinguishment, of the Supplier's indemnification out of the assets of the Trust as a result of:

- (a) the Supplier's fraud, negligence or breach of trust;
- (b) the Supplier having acted beyond power or improperly in relation to the Trust; or
- (c) any act intended to reduce or extinguish the Supplier's indemnification out of the assets of the Trust.

16.4. Supplier representations and warranties

The Supplier represents to the Client that each of the following statements is correct and not misleading as at the date of this Agreement:

- (a) the Trust is duly constituted and has not been terminated, nor has the date passed or any event occurred for the vesting of the Trust's assets;
- (b) it is the sole trustee of the Trust, it has not given any notice of resignation and no action has been taken to remove it or to appoint an additional trustee of the Trust;
- (c) the Trust Deed complies with all applicable laws;
- (d) it has complied with its obligations and duties under the Trust Deed and at law;
- (e) no property of the Trust has been re-settled, set aside or transferred to any other trust;
- (f) it has full legal capacity and power under the Trust Deed to:
 - (i) own the Trust's assets and carry on the business of the Trust as it is now being conducted; and

- (ii) enter into this Agreement and to carry out the transactions that this Agreement contemplates, as trustee of the Trust;
- (g) all action that is necessary or desirable under the Trust Deed or at law has been taken to:
 - (i) authorise entry into this Agreement and the carrying out by the Supplier of the transactions that this Agreement contemplates;
 - (ii) ensure that this Agreement is legal, valid and binding on the Supplier as trustee of the Trust and admissible in evidence against it in that capacity; and
 - (iii) enable it to properly carry on the business of the Trust;
- (h) it has carefully considered the purpose of this Agreement and considers that entering into this Agreement is part of the proper administration of the Trust, for the commercial benefit of the Trust and for the benefit of the beneficiaries of the Trust, and considers that the terms of this Agreement are fair and reasonable;
- (i) it has the right to be fully indemnified out of the Trust's assets in relation to the obligations and liabilities incurred by it under this Agreement, that right has not been modified, released or diminished in any way, and the Trust's assets are sufficient to satisfy that right of indemnity and all other obligations and liabilities in respect of which the Supplier has a right to be indemnified out of the Trust's assets; and
- (j) it has not released or disposed of its equitable lien over the Trust's assets.

16.5. Relevant definitions

For the purposes of this clause 16:

- (a) **Trust** means the Land Services SA Operating Trust; and
- (b) **Trust Deed** means the deed under which the Supplier is appointed as trustee of the Trust.

17. GENERAL

17.1. Discretion in exercising rights

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this Agreement expressly states otherwise.

17.2. Status of Client

The parties agree that the Supplier enters this Agreement as, and will remain at all times, an independent contractor and that the Client is not a partner or agent of the Supplier and does not have the power or authority, directly or indirectly or through its servants or agents, to bind the Supplier to any person except as provided by this Agreement.

17.3. No liability for Loss

A party is not liable for Loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this Agreement.

17.4. Approvals and consents

By giving its approval or consent a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

17.5. Costs

The parties shall be responsible for their own costs of negotiating, preparing and executing this Agreement.

17.6. Remedies cumulative

The rights and remedies provided in this Agreement are in addition to other rights and remedies given by law independently of this Agreement.

17.7. Variation and waiver

- (a) A provision of this Agreement, or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.
- (b) No forbearance, delay or indulgence by either party in enforcing any provision of this Agreement prejudices or restricts the rights of that party, nor does a waiver of any right operate as a waiver of any subsequent breach.

17.8. Assignment

- (a) The Client must not assign this Agreement, in whole or in part, or subcontract the performance of any of its obligations under this Agreement without the prior written consent of the Supplier.
- (b) The Supplier may assign its rights and novate its obligations under this Agreement to such person or entity as from time to time takes over the assets or assumes the functions of the Supplier relevant to the performance of this Agreement including, as applicable, the Government and the Client provides its consent to any such novation.

17.9. Indemnities

The indemnities in this Agreement are continuing obligations, independent from the other obligations of the parties under this Agreement and continue after this Agreement ends. It is not necessary for a party to incur expense or make payment before enforcing a right or indemnity under this Agreement.

17.10. Entire Agreement

This Agreement constitutes the complete agreement between the parties and supersedes all previous agreements, understandings and negotiations, written or oral, in respect of the matters dealt with in this Agreement.

17.11. Counterparts

This Agreement may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.

18. GOVERNING LAW

This Agreement is governed by the law in force in South Australia. Each party submits to the non-exclusive jurisdiction of the courts of that place.

19. INTERPRETATION

19.1. Definitions

The following words have these meanings in this Agreement unless the contrary intention appears.

Approved Plan Format means the format of each of the regulated forms for a Plan approved by the South Australian Registrar-General from time to time and as published by the Supplier.

Business Day means any day except a Saturday, Sunday or declared public holidays in South Australia.

Confidential Information means information disclosed by, or on behalf of, a party to this Agreement that:

- (a) is by its nature confidential or by the circumstances in which it is disclosed is confidential; or
- (b) is designated or identified by the disclosing party as confidential or which the receiving party knows, or ought reasonably know, is confidential.

Details means the details set out in Part A of this Agreement.

Exclusions means the costs incurred ordering relevant products and searches through SALLIS.

Fee means the fee(s) set out in Part B of this Agreement.

Force Majeure means a circumstance beyond the reasonable control of the party seeking to rely on Force Majeure and which results in that party being unable to observe or perform on time an obligation under this Agreement. Such circumstances include:

- (a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster; and
- (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution.

Government means the Treasurer of South Australia for an on behalf of The Crown in Right of the State of South Australia.

GST means GST as defined in the GST Act or any replacement or other relevant legislation and regulation and includes any interest or penalties charged in relation to the GST.

GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Law means any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in any jurisdiction.

Loss means any damage (whether foreseeable or not), loss, cost or expense (including legal fees on a full indemnity basis) and which may arise directly or indirectly.

Personal Information has the meaning given to that term in the *Privacy Act 1988* (Cth) and also includes any other information that could be used to identify an individual, including any information that could uniquely identify a property.

Personnel means, in respect of a party, the officers, employees, contractors (including subcontractors) and agents of that party.

Plan means any plan or map that is capable of registration by the South Australian Lands Titles Office or the General Registry Office under a relevant Law or as required by the South Australian Registrar-General, including cadastral plans, plans of division, uncertified plans or data plans.

Plan Information Material means all information and material:

- (a) that is designed to enable the development, amendment or creation of a Plan; or
- (b) relating to the requirements or form of a Plan that may be lodged,

that is prepared and published by the Government as approved by the South Australian Registrar-General (which includes the Plan Presentation Guidelines).

Plan Presentation Guidelines means the plan presentation guidelines prepared by, or at the direction of, the South Australian Registrar-General from time to time which describe the specific requirements for Plans which are lodged for acceptance by the Lands Titles Office or General Registry Office.

Privacy Laws means the *Privacy Act 1988* (Cth) and the Australian Privacy Principles under the *Privacy Act 1988* (Cth).

Properly Made means that the relevant decisions and actions are, to the extent relevant, made:

- (a) in good faith and for a proper purpose;
- (b) based on logically probative material;
- (c) considering only relevant considerations and ignoring irrelevant ones;
- (d) giving adequate weight to matters of great importance and not giving excessive weight to matters that are not of great importance;

- (e) acting reasonably and on reasonable grounds;
- (f) exercising any discretion independently and fairly;
- (g) free of any conflict of interests or bias, or any reasonable perception of conflict of interest or bias; and
- (h) otherwise observing the basic rules of procedural fairness.

SALLIS means the South Australian Land Integrated Land Information System.

Services has the meaning given in clause 1.1.

19.2. References to certain general terms

Unless the contrary intention appears, a reference in this Agreement to:

- (a) **(variations or replacement)** a document (including this Agreement) includes any variation or replacement of it;
- (b) **(clauses and schedules)** a clause or schedule is a reference to a clause in or schedule to this Agreement;
- (c) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(headings)** headings are for convenience only and do not affect interpretation;
- (e) **(law)** law means common law, principles of equity, laws made by parliament in any jurisdiction (and laws made by parliament including legislation, regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them) and any court order which a person is required by law to comply with;
- (f) **(singular includes plural)** the singular includes the plural and vice versa;
- (g) **(person)** the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any government agency;
- (h) **(executors, administrators, successors)** a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (i) **(joint and individually promisees)** an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (j) **(jointly and individually promisors)** an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (k) **(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (l) **(calculation of time)** a period of time dating from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (m) **(reference to a day)** a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (n) **(meaning not limited)** the words "include", "including", "for example" or "such as", when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (o) **(time of day)** time is a reference to Adelaide time;
- (p) **(writing and form)** a reference to writing includes any method of representing written words, figures, drawings or symbols in a visible or tangible form; and

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(q) **(reference to any thing)** any thing (including any amount) is a reference to the whole and each part of it.

19.3. Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience and do not affect the interpretation of this Agreement.